LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
NOV 13 1954
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1954. No. 5.

FRANCIS B. GEBHART, WILLIAM B. HORNER, EUGENE H. SHALLCROSS, JESSE OHRUM SMALL, N. MAXSON TERRY, JAMES M. TUNNELL, Members of the State Board of Education of the State of Delaware, GEORGE R. MILLER, JR., State Superintendent of Public Instruction of the State of Delaware, ALFRED EUGENE FLETCHER, GEORGE CLIFFORD JOHNSON, SAGER TRYON, EARL EDWARD ROWLES, Members of the Board of Education of the Claymont Special School District, HARVEY E. STAHL, and HAIG KUPJIAN,

Petitioners,

v.

ETHEL LOUISE BELTON, an Infant, by Her Guardian ad Litem, ETHEL BELTON, ELBERT JAMES CRUMPLER, an Infant, by His Guardian ad Litem, JOSEPH CRUMPLER, RICHARD LEON DAVIS and JOHN TERRELL DAVIS, Infants by Their Guardian ad Litem, JOHN W. DAVIS, SPENCER W. ROBINSON, an Infant, by Her Guardian ad Litem, WILLIE ROBINSON, STYRON LUCILLE SANFORD, an Infant, by Her Guardian ad Litem, EMMA FOUNTAIN, ALMENA A. SHORT, an Infant, by Her Guardian ad Litem, JOHN SHORT, MYRTHA DELORES TROTTER, an Infant, by Her Guardian ad Litem, HARLAN TROTTER, ETHEL BELTON, JOSEPH CRUMPLER, JOHN W. DAVIS, WILLIE ROBINSON, EMMA FOUNTAIN, JOHN SHORT, and HARLAN TROTTER,

Respondents.

FRANCIS B. GEBHART, WILLIAM B. HORNER, EUGENE H. SHALLCROSS, JESSE OHRUM SMALL, N. MAXSON TERRY, and JAMES M. TUNNELL, Members of the State Board of Education of the State of Delaware, GEORGE R. MILLER, JR., State Superintendent of Public Instruction of the State of Delaware, GORDON F. BIEHN, FREDERICK H. SMITH, HENRY C. MITCHELL, and ETHEL C. McVAUGH, Members of the Board of School Trustees of Hockessin School No. 29,

Petitioners,

v.

SHIRLEY BARBARA BULAH, an Infant, by Her Guardian ad Litem, SARAH BULAH, FRED BULAH and SARAH BULAH,

Respondents.

BRIEF FOR PETITIONERS ON THE MANDATE.

H. ALBERT YOUNG,
Attorney General of the State of Delaware.
CLARENCE W. TAYLOR,
Deputy Attorney General of the State of Delaware.
ANDREW D. CHRISTIE,
Special Deputy to the Attorney General.

International, 236 Chestnut St., Phila. 6, Pa.

TABLE OF CONTENTS.

	Page
STATUS OF THE CASES	2
PRELIMINARY	3
FACTUAL BACKGROUND IN DELAWARE	4
I. School System as It Existed Prior to the Decision in This Case	4
(A) Legal Basis	4
(B) State Board of Education	5
(C) Local School Districts for White Children	5
(D) Local School Districts for Colored Children	7
(E) School Finances	9
II. Desegregation to Date	10
(A) Progress	10
(B) Opposition	12
(C) Summary of Delaware's Situation	16
ARGUMENT—FORM OF MANDATE	17
I. The Decree of the Court of Chancery, as Affirmed by the Supreme Court of the State of Delaware, Should Be Affirmed	17
II. Recommendation With Respect to the Mandate	18
(A) Introduction	18
(B) This Court May and Should Permit a Gradual Adjustment From Segregated Public Education to a System Without Race Distinction	19
(C) This Court Should Remand the Cases to the Lower Courts for Formulation of Decrees for the Admittance of Plaintiffs to Public Schools Without Regard to Race as Soon as Practicable Within a Time Limit to Be Set by This Court	24
CONCLUSION	28

CASES CITED.

	Page
Ballard v. Searls, 130 U. S. 50, 9 S. Ct. 418, 32 L. ed. 846 ..	25
Briggs v. Elliott, 98 Fed. Supp. 529	20
Briggs v. Eliott, 103 Fed. Supp. 920	19
Brown v. Board of Education of Topeka, 98 Fed. Supp. 797 ...	19
Brown v. Board of Education of Topeka, 347 U. S. 483, 98 L. ed. (Advance p. 583), 74 S. Ct. 686	3, 17
Burr v. Board of School Commissioners of the City of Baltimore (Oral opinion Judge James K. Cullen, October 5, 1954, in the Superior Court of Baltimore City, Docket 1954, Folio 830)	11
Caretti v. Broring Building Co., (Md. Ct. App. 1926) 150 Md. 198, 132 A. 619, 46 ALR 1	21
Davis v. County School Board, 103 Fed. Supp. 337	20
Eccles v. Peoples Bank of Lakewood Village, 333 U. S. 426, 431, 92 L. ed. 784, 68 S. Ct. 641, 644	20
Fischer v. Hurst, 333 U. S. 147, 68 S. Ct. 389, 92 L. ed. 604 ..	23
Gebhart v. Belton, — Del. Ch. —, 91 A. 2d 137 .....2, 17,	19
Georgia v. Tennessee Copper Co., 206 U. S. 230, 51 L. ed. 1038, 27 S. Ct. 618; 237 U. S. 474, 59 L. ed. 1054, 35 S. Ct. 631; 237 U. S. 678, 59 L. ed. 1173, 35 S. Ct. 752; 240 U. S. 650, 60 L. ed. 846, 36 S. Ct. 465 21,	27
Hecht Co v. Bowles, 321 U. S. 321, 88 L. ed. 754, 64 S. Ct. 587	20
Hughson v. Wingham, (Wash. S. Ct. 1922) 120 Wash. 327, 207 P. 2, 27 ALR 327	21
McLaurin v. Oklahoma State Regents for Higher Education, 339 U. S. 637, 70 S. Ct. 851, 94 L. ed. 1149 23,	26
Mercoid Corp. v. Mid-Continent Investment Co., 320 U. S. 661, 88 L. ed. 376, 64 S. Ct. 268	21
Northern Securities Co. v. United States, 193 U. S. 197, 3624 S. Ct. 436	20
New Jersey v. New York, 283 U. S. 473, 75 L. ed. 1176, 51 Sup. Ct. 519; 284 U. S. 585, 75 L. ed. 506, 52 S. Ct. 120; 296 U. S. 259, 80 L. ed. 214, 56 S. Ct. 188 22,	27
Panama Mail S. S. Co. v. Vargas, 281 U. S. 670, 50 S. Ct. 448, 74 L. ed. 1105	25
Plessy v. Ferguson, 163 U. S. 537, 41 L. ed. 256, 16 S. Ct. 1138	19
Porter v. Warner Holding Co., 328 U. S. 395, 90 L. ed. 1332, 66 Supp. Ct. 1086	21

CASES CITED (Continued).

Page

Rogers v. The St. Charles, 19 How. (U. S.) 108, 15 L. ed. 563 25
Russell v. Southard, 12 How. (U. S.) 139, 13 L. ed 927 25
Securities and Exchange Comm. v. U. S. Realty and Improvement Co., 310 U. S. 434, 84 L. ed. 1293, 60 S. Ct., 1044 ... 21
Lillian Simmons v. Edmund F. Steiner, et al., Del. Ch. , 2 A. 2d 14, 15
Sipuel v. Board of Regents of University of Oklahoma, 332 U. S. 631, 68 S. Ct. 299, 92 L. ed. 247 (Law School) ...23, 25
Standard Oil Co. v. United States, 221 U. S. 1, 31 S. Ct. 502, 55 L. ed. 619 .....22, 27
State v. Hutchins, (N. H. S. Ct. 1919) 79 N. H. 132, 105 A. 519, 2 LAR 1685 21
State of Missouri ex rel. Gaines v. Canada, 305 U. S. 337, 59 S. Ct. 232, 83 L. ed. 208 23
Sweatt v. Painter, 339 U. S. 629, 70 S. Ct. 848, 94 L. ed. 1114 (University of Texas Law School) 23, 25
United States v. American Tobacco Co., 221 U. S. 106, 31 S. Ct. 632, 55 L. ed. 663 .....22, 25, 27
United States v. National Lead Co., 332 U. S. 319, 67 S. Ct. 1634, 91 L. ed. 2077 .....22, 27
United States v. Paramount Pictures, Inc., 334 U. S. 131, 92 L. ed. 1260 .....22, 27
Universal Battery Co. v. United States, 281 U. S. 580, 50 S. Ct. 422, 74 L. ed. 1051 25
Virginian Railway Co. v. System Federation No. 40, 300 U. S. 515, 552, 81 L. ed. 789, 57 S. Ct. 592, 601 21

AUTHORITIES CITED.

Page

46 ALR pp. 35-37 21
The Book of States 1954-1955, Frank Smothers, Editor, The Council of State Governments (1953), p. 245 9
Opinion of John M. Dalton, Attorney General of Missouri, June 30, 1954 11
Robert C. Stewart, A Proposed Plan for the Reorganization of Administrative Units in the State of Delaware (1948) (an unpublished study) 4, 7

CONSTITUTIONS AND STATUTES CITED.

	Page
14 Delaware Code (1953)	4
14 Delaware Code, Chapter 1 (1953)	5
14 Delaware Code, Chapters 3, 5, 7 and 9 (1953)	6
14 Delaware Code, Chapter 11 (1953)	6
14 Delaware Code, Chapter 13 (1953)	9
14 Delaware Code, Chapter 17 (1953)	9
14 Delaware Code, Chapter 29 (1953)	9
14 Delaware Code, Section 141 (1953)	4
Delaware Constitution of 1897, Article II, Section 19	5
Delaware Constitution of 1897, Article X, Section 1	4
Delaware Constitution of 1897, Article X, Section 2	4
32 Delaware Laws, Ch. 160 (1921)	4
49 Delaware Laws, Chapter 217 at page 386	9
49 Delaware Laws, Chapter 337 (1953)	10
Revised Code of Delaware, 1852, Chapter 42	5

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1954. No. 5.

Francis B. Gebhart, William B. Horner, Eugene H. Shallcross, Jesse Ohrum Small, N. Maxson Terry, James M. Tunnell, Members of the State Board of Education of the State of Delaware, George R. Miller, Jr., State Superintendent of Public Instruction of the State of Delaware, Alfred Eugene Fletcher, George Clifford Johnson, Sager Tryon, Earl Edward Rowles, Members of the Board of Education of the Claymont Special School District, Harvey E. Stahl, and Haig Kupjian,
Petitioners,

v.

Ethel Louise Belton, an Infant, by Her Guardian ad Litem, Ethel Belton, Elbert James Crumpler, an Infant, by His Guardian ad Litem, Joseph Crumpler, Richard Leon Davis and John Terrell Davis, Infants by Their Guardian ad Litem, John W. Davis, Spencer W. Robinson, an Infant, by His guardian ad Litem, Willie Robinson, Styron Lucille Sanford, an Infant, by Her Guardian ad Litem, Emma Fountain, Almena A. Short, an Infant, by Her Guardian ad Litem, John Short, Myrtha Delores Trotter, an Infant, by Her Guardian ad Litem, Harlan Trotter, Ethel Belton, Joseph Crumpler, John W. Davis, Willie Robinson, Emma Fountain, John Short, and Harlan Trotter,
Respondents.

Francis B. Gebhart, William B. Horner, Eugene H. Shallcross, Jesse Ohrum Small, N. Maxson Terry, and James M. Tunnell, Members of the State Board of Education of the State of Delaware, George R. Miller, Jr., State Superintendent of Public Instruction of the State of Delaware, Gordon F. Biehn, Frederick H. Smith, Henry C. Mitchell, and Ethel C. McVaugh, Members of the Board of School Trustees of Hockessin School No. 29,
Petitioners,

v.

Shirley Barbara Bulah, an Infant, by Her Guardian ad Litem, Sarah Bulah, Fred Bulah and Sarah Bulah,
Respondents.

BRIEF FOR PETITIONERS ON THE MANDATE.

STATUS OF THE CASES.

Petitioners seek review of final judgments of the Supreme Court of the State of Delaware affirming orders of the Court of Chancery of the State of Delaware. Petitioners are members of the Board of Education of the State of Delaware and of the Boards of Education of Claymont Special School District and Hockessin School District #29. The provision from which petitioners seek relief is the same in both cases and is as follows:

> "That . . . the defendants and each of them, their agents and employees are enjoined from denying to infant plaintiffs and others similarly situated, because of color or ancestry, admittance as pupils in the . . ." (designated schools).

This Court heard oral argument on December 11, 1952. Petitioners, pursuant to leave of the Court filed a brief on December 31, 1952.

On June 8, 1953, this Court ordered the case restored to the docket and assigned for reargument. The subject matter of the reargument was directed to the history and construction of the Fourteenth Amendment and the relief to be granted.

This Court heard oral argument, and at that time it was pointed out that the Delaware cases are before this Court on the narrow issue of the type of relief which should have been granted. In other words, where there had been a finding of inequality, does the Fourteenth Amendment require immediate admission of respondents to schools maintained for white children?

By its decision of May 17, 1954, this Court struck down the principle of "separate but equal" educational facilities.

In the Fall of 1952, respondents, in compliance with the order of the Chancellor, as affirmed by the Supreme Court of Delaware,[1] were granted admission to the respective

---

1. *Gebhart v. Belton*, — Del. Ch. —, 91 A. 2d 137.

white schools. These respondents have remained in those schools or have completed their education according to that order. The admission of the negro children to those schools has taken place without incident. The request to afford the State a reasonable period of time within which to equalize the facilities in those two specific districts is no longer before the Court.

PRELIMINARY.

This Court by decision of May 17, 1954 disposed of the constitutional issues involved in the several cases before it.

The Court reserved for further consideration the question of the type of relief to which the successful parties are entitled. The parties have been requested to present further argument on questions previously propounded dealing with the power and propriety of effecting a gradual adjustment to non-segregated public education and the forum best suited to the administration of such relief.[2]

This brief is submitted in compliance with the Court's request. It is directed to (1) a factual review of the Delaware educational system, the experience of this State in its efforts to effect desegregation since this Court's decision of May 17, 1954, the degree of social acceptability or unacceptability of desegregation in Delaware, and (2) a discussion of the legal precedents and policy considerations by which this Court should be governed in disposing of the cases before it.

---

2. *Brown v. Board of Education of Topeka*, 347 U. S. 483, 98 L. ed. (Advance p. 583), 74 S. Ct. 686. Footnote 13. "4. Assuming it is decided that segregation in public schools violates the Fourteenth Amendment. "(a) would a decree necessarily follow providing that, within the limits set by normal geographic school districting, Negro children should forthwith be admitted to schools of their choice, or "(b) may this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions? "5. On the assumption on which question 4 (a) and (b) are based, and assuming further that this Court will exercise its equity powers to the end described in question 4 (b), "(a) should this Court formulate

FACTUAL BACKGROUND IN DELAWARE.

I. School System as It Existed Prior to the Decision in This Case.

(A) *Legal Basis.*

The Constitution of the State of Delaware adopted in 1897, states that "the General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools."[3] The Constitution provides for equitable apportionment of certain appropriations among the School Districts and further provides "that in such apportionment, no distinction shall be made on account of race or color, and separate schools for white and colored children shall be maintained".[4]

Since there is little additional detail in the Constitution, the Delaware education system is governed largely by statute.[5] The present pattern of education stems largely from the School Code of 1921[6] which was enacted after lengthy study. Prior to that date schools were in general locally run from local funds.[7]

---

detailed decrees in these cases: "(b) if so, what specific issues should the decrees reach; "(c) should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees; "(d) should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?"

3. Delaware Constitution of 1897, Article X, Section 1.

4. Delaware Constitution of 1897, Article X, Section 2. The separate requirement also appears at 14 Del. Code, Section 141 (1953).

5. Title 14, Delaware Code (1953).

6. 32 Delaware Laws, Ch. 160 (1921).

7. For a careful legal history of Delaware education see Robert C. Stewart, *A Proposed Plan for the Reorganization of Administrative Units in the State of Delaware* (1948) an unpublished study.

(B) *State Board of Education.*

The general administration and supervision of the free public schools in Delaware is vested in the State Board of Education.[8] The Board consists of six residents appointed by the Governor from various parts of the State. No one subject to the authority of the Board may serve thereon, and the members receive only their expenses and twenty-five dollars per meeting.

The Board in turn appoints a Superintendent of Public Instruction who acts as Executive Secretary. The State Board employs a number of other executive officers, and administrative assistants. The State Board through its staff has almost complete charge of several important phases of the State system such as: education of handicapped children, student driving training and education of the handicapped. The Board makes the budget recommendations for all public schools to the State Budget Commission and to the General Assembly; it also must approve all capital improvements. But the State Board's most important function is the administrative and instructional supervision which it exercises in varying degrees over all the schools through its general powers.

(C) *Local School Districts for White Children.*

The entire State is divided into local districts for the education of white children and such districts have rather definite geographical boundaries. The boundary lines for the original districts were set more than a hundred years ago.[9] Frequent changes were made by statute until 1897 when the present State Constitution was adopted. The Constitution now forbids local or special laws relating to the creation or changing the boundaries of school districts.[10] Many consolidations and some changes in boundaries have

8. See generally Chapter 1, Title 14, Delaware Code (1953).
9. See Revised Code of Delaware, 1852, Chapter 42.
10. Delaware Constitution of 1897, Article II, Section 19.

taken place under various statutes of general application although such statutes make changes difficult.[11]

There remain, however, sixty-three local school districts in the State for the education of white children.[12]

Sixteen of the most populated local districts are known as "Special School Districts" and in such districts the local boards exercise a great deal more authority than do the other local boards in the State. The most important Special School District comprises the entire city of Wilmington. The Wilmington schools have always operated as an almost separate school system although they receive the same uniform State appropriations as do other schools.

Forty-seven of the local districts are known as "School Districts". Here the local boards act largely on behalf of the State Board and make fewer individual decisions.

Most of the local districts whether they are School Districts or Special School Districts, have certain characteristics in common. All have a school board made up of local residents who are responsible for maintaining the buildings and hiring all personnel for the school involved. All such boards receive uniform State appropriations and all are subject to a certain amount of general supervision from the State Board. In all cases the local board, after favorable referendum, may levy local taxes to supplement the funds received from the State. Most of the local boards are elected by the residents of the district but in most of the districts in New Castle County, including Wilmington, the boards are appointed by the resident judge of the Superior Court.[13]

Many of the local districts have no high school and the State Board arranges for high school education by setting up high school attendance areas which sometimes include several local districts. At present the local district

---

11. 14 Del. Code (1953), Ch. 11.

12. Some of these are now integrated. See "Desegregation to Date", *infra*.

13. 14 Del. Code (1953), Chs. 3, 5, 7 and 9.

operating the high school bears whatever local cost there is for such high school and the other districts have no expense in connection therewith. In one case however, a large high school district was established to serve several local districts without being operated by the board of any of the districts served. Those served within the geographic area of that high school district are subject to local school taxes for the high school.

Several of the districts serve large and populated areas with more than one building and with a school superintendent as well as principals for each building. Such districts are in a position to adjust their educational program to some form of integration with less difficulty than are the eleven rural districts which still maintain schools with only one or two teachers.

The State Board has long recognized that greater educational opportunities as well as administrative economies would result from consolidation of many of the existing districts. Attempts to obtain local approval of such consolidations have met with frequent set-backs, and the General Assembly has refused to liberalize the statutory requirements for consolidation. It is apparent, therefore, that there is strong local opinion in many parts of the State against changing the current school arrangements. This opinion was frequently expressed long before integration played any part in such discussions.

(D) *Local School Districts for Colored Children.*

In addition to the sixty-three white districts discussed above there are forty-two School Districts which operate schools for colored children. These districts were developed at a later date than the white school districts and with less definite boundries.[14] Some colored districts exist entirely within white districts while others include parts of

14. Robert C. Stewart op. cit. p. 28.

two or more districts. Two of the colored high school districts include entire counties.[15] All of the colored schools operate within the uniform State appropriations and capital outlays are paid without local contributions. There is no attempt to collect local school taxes from colored residents except in Special School Districts. In other respects the colored school boards operate exactly as the white boards and the same statutes govern both. The school boards, whether they are white or colored, are made up of respected local citizens, many of whom oppose any change or consolidation.

The picture is further complicatead by the existence of several colored schools under the direct jurisdiction of white Special School Districts. In thirteen instances including the City of Wilmington, a single board operated both the white and colored schools of the district. Exhibit 1 lists all of the colored schools of the State and shows the complicated geographic and administrative relation of these districts and the white districts.

It is apparent that those Special School Districts which already operate separate schools for white and colored children are in the best position to integrate such schools with a minimum of administrative adjustment. Orderly integration can be more satisfactorily accomplished by reorganization of other school districts in the State. White or colored districts should cease to exist as such and new districts should be formed. Such reorganization would normally be a function of the State Legislature. Since the school laws are largely statutory rather than constitutional, a simple majority in the General Assembly with approval by the Governor would be sufficient to make the necessary changes. However, representation in the General Assembly is heavily weighted in favor of the less populated areas

---

15. The William M. Henry Comprehensive School in Kent County and the William C. Jason Comprehensive School in Sussex County.

where consolidation of school districts in general has long been opposed.

Legislative reorganization of the public school districting in this State will permit a more orderly transition to a non-segregated public education system. However, the composition of the General Assembly is such that the majority of the members are elected from sections which are sincerely opposed to integration. Legislation which will aid in the integration of our public schools will be met with strong opposition. On the other hand, realization that integration is to become a reality, whether by court edict or legislative act, may result in enactment of legislation which will lessen the impact of this Court's decision in those areas where the dominant mood is opposed to integration.

(E) *School Finance.*

The State pays more than 90% of the operating expenses of the Delaware public schools. The balance is paid by the local school districts through local taxes. No other state government pays so large a percentage of the cost.[16] In the administration of these funds units of children are the basis of calculation and there is no differentiation based on color. There is a minimum salary schedule for teachers and other school personnel and these salaries are paid from State funds.[17] There are uniform State allowances to each district for all other expenses and such allowances are based on the number of pupils in attendance.[18] Transportation of pupils is provided at State expense.[19]

---

16. *The Book of States 1954-1955,* Frank Smothers, Editor, The Council of State Governments (1953), p. 245.

17. 14 Del. Code (1953), Chapter 13.

18. The appropriations are based on "units of pupils" as defined in the statute. 14 Del Code (1953), Chapter 17.

19. 49 Delaware Laws, Chapter 217 at page 386; 14 Del. Code (1953), Chapter 29.

The most recent school construction program provides for improvements costing over $17,000,000, more than $12,000,000 of which is to be paid from State funds while local districts contribute about $5,100,000.[20] The colored school districts and many white districts have no local school taxes at all. Many of the white districts have had to levy local property taxes to amortize bonds issued to pay the local share of capital improvements. Some districts also levy taxes to supplement the State appropriations for general expenses and salaries.

Any reorganization of school districts will necessarily involve a rearrangement of the present local school tax picture. Attention must also be given to the bonded indebtedness of the various districts.

II. Desegregation to Date.

(A) *Progress.*

Since the decision of the Court, issued May 17, 1954, significant progress has been made toward abolishing segregation in parts of the Delaware public school system. Shortly after that decision, the State Board of Education sought the opinion of the Delaware Attorney General as to whether it could immediately set integration machinery in motion in those districts already prepared for desegregation or whether it was necessary to await the final mandate of the United States Supreme Court. The opinion of the Attorney General, dated June 9, 1954, held in effect that school districts could proceed with integration, in accordance with the decision of May 17, 1954 in this case, without doing violence to the constitution and laws of our own State and notwithstanding the fact that the mandate of the United

20. 49 Delaware Laws (1953), Chapter 337.

States Supreme Court had not yet been handed down.[21] (Exhibit 2).

As a result of the Attorney General's opinion, the State Board of Education developed and adopted Policy Statement I, as of July 11, 1954 (Exhibit 3). This granted permission to the Wilmington school authorities to move promptly into a partial integration program (See Exhibit 4). It urged that other school authorities together with interested citizen groups take immediate steps to formulate integration plans in the various districts and to submit these plans to the State Board of Education for review. The Policy Statement brought various phases of the problem to the attention of those concerned and pledged cooperation of the State Board with the local school units.

On August 19, 1954, the State Board of Education adopted Policy Statement II (Exhibit 5) which concerned the opening of schools in September, 1954. In this statement all schools with four or more teachers were requested to prepare and present tentative plans for integration in their area on or before October 1, 1954.

On August 26, 1954, the State Board of Education adopted Policy Statement III (Exhibit 6). This statement was designated to assist the local school authorities in their plans for integration by bringing to their attention various more specific items and suggestions which should be considered in connection with their plans.

Several school districts promptly submitted plans for partial or complete integration and the State Board of Education approved several such plans, effective at the beginning of the present school year, 1954-1955. Exhibit 7 shows that in areas containing about 28% of the total negro school population of the State, integration has been

---

21. For similar holdings see: Opinion of John M. Dalton, Attorney General of Missouri, June 30, 1954; *Burr v. Board of School Commissioners of the City of Baltimore,* (Oral opinion, Judge James K. Cullen, October 5, 1954, in the Superior Court of Baltimore City, Docket 1954, Folio 830).

undertaken without incident. It should be observed, however, that most of the integration has been in the northern part of New Castle County where there is the greatest concentration of the population of the State. Furthermore an inspection of the districts involved would reveal that a comparatively small number of colored children are taking advantage of their right to attend schools which were formerly all white.

The significant fact is that voluntary steps toward desegregation have taken place in a number of districts on a partial basis and that the resultant integration has met with community acceptance.

(B) *Opposition.*

In the lower counties of the State the dominant mood is opposed to integration. Some of the school districts have made no plans looking toward eventual integration; other districts merely indicate a willingness to take whatever steps the court may direct. In the Laurel school district, located near the southern border of the State of Delaware, a public opinion poll conducted with the approval of the local school board registered 1258 to 31 against desegregation.[22]

At the beginning of the 1954-1955 school year, the Board of the Milford Special School District admitted ten Negro children to the tenth grade of the Milford High School. These pupils continued to attend the high school through September 17, 1954, a period of nine school days, without incident. On September 17, there was a mass meeting attended by about 1,500 persons who were opposed to the admission of the Negro children. The school session was dispensed with on September 20, 1954 in order that a special meeting of the parents of the school children and the members of the School Board could be held to discuss the prob-

22. The poll was held at the white school and only seven negro residents voted.

lem of the integration of the Negro children into the white schools.

A petition was presented to the local School Board requesting it to rescind its action in admitting the ten Negro pupils. The Milford School remained closed during the entire week beginning September 20th. The Board of the Milford Special School District resigned on September 23, 1954.

The feeling against the admission of these ten Negro children in the Milford Special School District continued to run high. Beginning on September 26, 1954, mass meetings were conducted by an organization known as the National Association for the Advancement of White People. A major objective of these meetings was the boycotting of all schools, and the Milford High School in particular, in order to bring pressure upon the local school authorities to remove the Negro children from the Milford High School and to prevent further action in lower Delaware directed toward integration. The meetings of the National Association for the Advancement of White People were designed to (1) incite anti-Negro feeling among white people, (2) inspire a willingness to commit violence in order to perpetuate segregation, and (3) to advocate violation of the State School Attendance Laws.

The State Board of Education reopened the Milford High School on September 27th with the ten colored children in attendance. On that day, crowds milled around the school, and some people took names of children that attended school. School attendance was only 456 pupils of 1,562 pupils enrolled. A motorcade of cars decorated with streamers and carrying placards reading "Send them back to Africa" and "Join the NAAWP" passed the school. Circulars were distributed among the crowds urging boycott of the Milford School. On September 29th, attendance in neighboring school districts dropped to a small fraction of their enrollment.

A new Board of the Milford Special School District, organized September 30th, removed the names of the colored students from the rolls of the Milford High School, thus compelling the Negro pupils to withdraw from the Milford High School and attend a colored school.

The President of the Board of Milford Special School District stated that:

> "Public demonstrations against the Negro students attending the white school were of such proportions that the schools were closed during the week of September 20 to September 24 inclusive and were reopened on September 27 by the State Board of Education and under its direction and supervision. Thereafter the public demonstrations increased and threats of violence were made, because of which school attendance dropped to approximately one-third, and the whole educational program of the Milford Special School District was disrupted.
>
> "On September 30, 1954, the Board of Education of the Milford Special School District notified all of said Negro students that their names had been removed from the rolls of the Milford High School. This action by the Milford Board of Education was done with a view of aiding and restoring law and order to the school district, in the interest of the educational program of the school district and for the general welfare of the entire student body, and was prompted particularly for the safety of the colored students." (Affidavit of Edmund F. Steiner, October 7, 1954); *Lillian Simmons v. Edmund F. Steiner, et al.,* Del. Ch. , 2 A. 2d .

Suit was immediately filed on behalf of the ten Negro children in the Delaware Court of Chancery requesting that the Board of the Milford Special School District be enjoined from denying admission to the Negro children.

The Attorney General appeared as *amicus curiae* and urged that the ten Negro pupils had acquired a status as students in the Milford High School by their admittance by the Milford School Board, and that a later Board could not expel them and, further, that the Negro children having acquired such status could not be expelled because of threats of violence and unlawful disruption of the public order.

The Court of Chancery in deciding the issue in the preliminary steps of the proceeding granted an injunction preserving the status of the Negro children as pupils in the Milford High School. Vice-Chancellor William Marvel stated:

> "Except for their names now being withdrawn from the records of the school, plaintiffs' position is no different than that of other Negro students of Delaware now attending partially integrated schools on the basis of their rights to equal protection under the Constitution of the United States. It would be unrealistic to maintain that these other students are unlawfully in school during the present phase of permissive integration.
>
> "I hold that plaintiffs, having been accepted and enrolled, are entitled to an order protecting their status as students at Milford High School; that their right to a personal and present high school education having vested on their admission, they need not wait for decrees in the cases decided by the United States Supreme Court in May as a prerequisite to the relief they seek." *Lillian Simmons v. Edmund F. Steiner, et al., supra.*

This case is now on appeal before the Delaware Supreme Court. By virtue of a stay granted by the Delaware Supreme Court, the ten Negro children presently attend a Negro High School located sixteen miles from the Milford High School.

(C) *Summary of Delaware's Situation.*

Although Delaware contains only three counties, the administration of its educational system is a complex mixture of centralized administrative and financial authority and autonomous local control. Partial desegration has progressed satisfactorily in all but one of the districts where it has been undertaken. In the lower part of the State there is strong opposition to immediate integration.

In certain areas in Delaware a gradual transition from a segregated school system to a non-segregated school system is necessary to insure permanency and community acceptance.

The events at Milford demonstrate that:

1. Public opinion in lower Delaware has been aroused against desegregation and that a significant percentage of the people in parts of Delaware are not ready to accept integration.

2. The immediate admission of Negro children to white schools under the old "separate but equal" doctrine is inconsistent with orderly gradual transition from separate to integrated schools in areas where such immediate admission is opposed by the local population. The decision of the Supreme Court of the State of Delaware makes immediate admission mandatory where separate facilities are not equal. Since many instances of unequal facilities may be presented to the courts for immediate relief under the "separate but equal" doctrine, gradual integration depends upon the time element to be provided for in this Court's mandate during this period of transition. The mandate of this Court should make it clear that, notwithstanding inequality of facilities, the local courts shall in the exercise of their equity powers be permitted to grant such relief as they deem proper after considerat on of the physical, economic and social conditions of the community and upon a showing of a bona fide effort directed toward orderly desegregation.

ARGUMENT—FORM OF MANDATE.

I. The Decree of the Court of Chancery, as Affirmed by the Supreme Court of the State of Delaware, Should Be Affirmed.

The two cases from the State of Delaware which are before this Court presented the question of the propriety of the Order of the Chancellor directing admission of Negro children to two public schools formerly restricted in accordance with the Constitution of the State of Delaware to white children where the Court found that the facilities available to the Negro students were not equal to those available to white students. The issue for determination by this Court was whether the proper decree should not have been one directing the authorities in charge of public education in the State of Delaware to equalize the separate facilities.

The decision of this Court in *Brown v. Board of Education of Topeka*, 347 U. S. 483, 98 L. ed. (Advance p. 583), 74 S. Ct. 686 has eradicated the principle of "separate but equal" education upon which the Delaware cases were predicated and hence has foreclosed the issues of the instant cases, with the exception of the question involving the immediacy of the right of the Negro children to admission to the public schools formerly available only to white students. The matter before the Court now is the implementation of its decision of May 17, 1954 by an appropriate decree or mandate.

In compliance with the decrees of the Chancellor which were affirmed by the Supreme Court of Delaware,[23] the plaintiffs in these cases were admitted to the Hockessin and Claymont Schools. Inasmuch as they have remained in those schools since the Fall of 1952 without incident or social repercussion, it is felt that the conditions which war-

23. *Gebhart v. Belton*, — Del. Ch. —, 91 A. 2d 137.

rant postponement of desegregation in parts of Delaware as well as in certain other states which we believe do justify a deferment of the relief to which the plaintiffs are entitled do not exist with respect to the two districts involved in the Delaware cases.

This Court has determined that further maintenance of segregated public education violates the Constitution of the United States. The primary reason for delaying relief is an existing severe social inflexibility which would make impracticable the immediate admission of Negro children in white schools. The Court below found no such need for postponement with respect to the plaintiffs in the Delaware cases. Experience has sustained the wisdom of the result decreed by the Delaware Courts. It is, therefore, our recommendation, that the proper order to be entered in the instant Delaware cases, involving the named plaintiffs, is an affirmance of the decision of the Supreme Court of Delaware.

II. Recommendations With Respect to the Mandate.

(A) *Introduction.*

This Court in its decision on May 17, 1954 requested that the parties to the several actions before this Court present further argument on questions formerly propounded by this Court with respect to the form of relief to be given pursuant to its decision. The Court expressed a willingness to receive the views of the Attorney General of the United States and the Attorneys General of those States which either require or permit segregated public education.

In view of the foregoing recommendation with respect to the Delaware cases, our discussion of the questions raised by this Court is for the assistance of the Court in the formulation of a proper mandate. The discussion is presented as an aid to the Court, recognizing that many of the problems

raised by the other States bear a striking similarity to problems existing in parts of the State of Delaware. Moreover, the relief granted by this Court in the cases before it will be the prophetic handiwork from which must flow the orderly desegregation of public education in a large segment of the country.

(B) *This Court May and Should Permit a Gradual Adjustment from Segregated Public Education to a System Without Race Distinction.*

By the decision of May 17, 1954, this Court has invalidated almost a century of social tradition which has been perpetuated under apparent constitutional sanction for two generations.[24] Social thinking, public mores and school expenditures have been founded upon the time-accepted doctrine of "separate but equal" public education. The factual review which appears earlier in this brief, as well as similar reviews made in the briefs submitted on behalf of other states, demonstrate the somber extent to which the doctrine of segregation in public education saturates the thinking of the citizens of some of our states. This Court has eradicated the constitutional sanction of this tradition. A transition is required which only time can effectuate. Shock is not the medium by which this transition can be accomplished.

In formulating the appropriate relief, it must be borne in mind that this Court has redefined a basic constitutional right. In all of the cases before this Court, with the exception of the Delaware cases,[25] the lower courts either found factual equality [26] or avoided the consequences which the Court now considers by allowing the public school authorities an opportunity to improve their facilities in order to

24. *Plessy v. Ferguson*, 163 U. S. 537, 41 L. ed. 256, 16 S. Ct. 1138.

25. *Gebhart v. Belton*, — Del. Ch. —, 91 A. 2d 137.

26. *Brown v. Board of Education of Topeka*, 98 Fed. Supp. 797; *Briggs v. Elliott*, 103 Fed. Supp. 920.

meet the requirements of the "separate but equal" doctrine.[27] Opportunity to equalize facilities is now of no significance if there is racial segregation. For the first time, this Court has eliminated considerations of equality of treatment. The Court in its interdiction of segregated facilities has struck at the very heart of the public school system in many states and of necessity has put in issue the status of not only the named plaintiffs but all children who are a part of segregated school systems.

The cases before this Court are from courts of equity. One of the characteristics which has perpetuated the greatness of equity jurisdiction is its flexibility of remedy. In *Hecht Co. v. Bowles,* 321 U. S. 321, 329, 88 L. ed. 754, 64 S. Ct. 587, 592, this Court said:

> "The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and the private needs as well as between competing private claims."

Equity "may mold its decree so as to accomplish practical results—such results as law and justice demand." *Northern Securities Co. v. United States,* 193 U. S. 197, 360, 24 S. Ct. 436, 466.

In the formulation of equitable relief, "it is always the duty of a Court of equity to strike a proper balance between the needs of the plaintiff and the consequences of the giving of the desired relief." *Eccles v. Peoples Bank of Lakewood Village,* 333 U. S. 426, 431, 92 L. ed. 784, 68 S. Ct. 641, 644.

Considerations of the public interest are of great importance in the formulation of an appropriate equity decree.

---

27. *Davis v. County School Board,* 103 Fed. Supp. 337; *Briggs v. Elliott,* 98 Fed. Supp. 529.

> "Courts of equity may, and frequently do go much farther both to give and withhold relief in furtherance of public interest than they are accustomed to go when only private interests are involved." *Virginian Railway Co. v. System Federation No. 40,* 300 U. S. 515, 552, 81 L. ed. 789, 57 S. Ct. 592, 601; see also *Mercoid Corp. v. Mid-Continent Investment Co.,* 320 U. S. 661, 88 L. ed. 376, 64 S. Ct. 268; *Securities and Exchange Comm. v. U. S. Realty and and Improvement Co.,* 310 U. S. 434, 84 L. ed. 1293, 60 S. Ct., 1044; *Porter v. Warner Holding Co.,* 328 U. S. 395, 90 L. ed. 1332, 66 S. Ct. 1086.

Time for adaptation or readjustment to a policy declared by a court is an important potion to which the courts have adverted in striving for the equitable remedial balance. This principle has been applied in at least two important branches of the law, namely in cases involving elimination of nuisances and in cases of violation of the anti-trust laws.

In the nuisance field, the leading case of *Georgia v. Tennessee Copper Company,* 206 U. S. 230, 51 L. ed. 1038, 27 S. Ct. 618, is an example in which this Court determined that injunctive relief should be given "after allowing a reasonable time to the defendants to complete the structures that they are now building, and the effort that they are making to stop the fumes." The decisions of various state courts are in accord with the *Georgia* case, *supra. Hughson v. Wingham* (Wash. S. Ct. 1922) 120 Wash. 327, 207 P. 2, 27 ALR 327; *Caretti v. Broring Building Co.* (Md. Ct. App. 1926) 150 Md. 198, 132 A. 619, 46 ALR 1; *State v. Hutchins* (N. H. S. Ct. 1919) 79 N. H. 132, 105 A. 519, 2 ALR 1685.[28]

Another case in which this Court allowed a reasonable time for adjustment to the court's holding is the case of

---

28 Other cases granting a reasonable time for adjustment to the holding of the court in the field of nuisance appear in an annotation in 46 ALR pp. 35-37.

New Jersey v. New York, 283 U. S. 473, 75 L. ed. 1176, 51 S. Ct. 519. By this decision, this Court held that the State of New Jersey was entitled to relief from the dumping of New York City garbage into the ocean off the New Jersey coast. This Court permitted New York City to have a period of approximately one and a half years to conform to its decision. *New Jersey v. New York*, 284 U. S. 585, 75 L. ed. 506, 52 S. Ct. 120. Subsequent action before this Court resulted in postponing the finality of the court's decision until December 1935, a period of four years from the entry of the first order in 1931.[29]

The complexity of modern business organization has on various occasions led this and other courts to provide for deferred relief. In cases where immediate injunctive relief would have caused substantial public injury by cutting off the flow of vital commodities, this Court has permitted a period of transition. *U. S. v. American Tobacco Co.*, 221 U. S. 106, 31 S. Ct. 632, 55 L. ed. 663; *Standard Oil Co. v. United States*, 221 U. S. 1, 31 S. Ct. 502, 55 L. ed. 619. The Court will consider the best method of accomplishing the declared result "with as little injury as possible to the interests of the general public." *United States v. American Tobacco Co., supra.*

Courts have faced the realities of complex situations and after determination of the basic rights involved have permitted extended periods for the formulation of an equitable plan to implement the Court's decision. *United States v. Paramount Pictures, Inc.*, 334 U. S. 131, 92 L. ed. 1260, 68 S. Ct. 915; *United States v. National Lead Co.*, 332 U. S. 319, 67 S. Ct. 1634, 91 L. ed. 2077. This Court, in passing upon the length of the period of transition, has extended that period beyond that fixed by the lower court. *United States v. American Tobacco Co., supra.*

In the light of the numerous actions of this Court in permitting flexible adaptation of relief to existing condi-

29. *New Jersey v. New York*, 296 U. S. 259, 80 L. ed. 214, 56 S. Ct. 188.

tions, there is ample precedent for the granting of time for adjustment in the cases now before this Court.

This Court must determine whether the equitable balance militates in favor of gradual rather than immediate relief. Under the "separate but equal" doctrine, this Court declared that a plaintiff who was deprived of educational facilities equal to those made available by the state to any other race was being deprived of a personal right,[30] of a nature which entitled the injured party to immediate admittance to white educational facilities.[31] The cases in which that doctrine was announced involved institutions of higher learning.[32] The determination of the respective cases affected few except the individual plaintiffs. Desegregation was effected at a level where the intellectual and philosophical approach to the racial problem and the maturity of those affected in all probability would lead to a degree of acceptance or tolerance not to be found in elementary and high schools. The extent of racial desegregation involved in those cases was minimal.

Whether the right to immediate admission to white schools is an absolute right even under the "separate but equal" doctrine remains open to question. In the case of *Fischer v. Hurst*, 333 U. S. 147, 68 S. Ct. 389, 92 L. ed. 604, this Court had occasion to consider whether the order entered by the District Court pursuant to the mandate of this Court in *Sipuel v. Board of Regents of University of Oklahoma, supra*, properly complied with the mandate.

---

30. *State of Missouri, ex rel. Gaines v. Canada*, 305 U. S. 337, 59 S. Ct. 232, 83 L. ed. 208.

31. *McLaurin v. Oklahoma State Regents for Higher Education*, 339 U. S. 637, 70 S. Ct. 851, 94 L. ed. 1149.

32. *Sipuel v. Board of Regents of University of Oklahoma*, 332 U. S. 631, 68 S. Ct. 299, 92 L. ed. 247 (Law School); *Sweatt v. Painter*, 339 U. S. 629, 70 S. Ct. 848, 94 L. ed. 1114 (University of Texas Law School); *McLaurin v. Oklahoma State Regents for Higher Education, supra*, (University of Oklahoma); *State of Missouri ex rel. Gaines v. Canada, supra*, (School of Law of State University of Missouri).

The order of the District Court, which alternatively directed (1) that plaintiff be admitted to the University or (2) that defendant refuse admission to all applicants until a separate law school of equal facilities and standing could be established, was held by this Court not to have departed from this Court's mandate.

Factors which weighed in favor of immediate relief under the "separate but equal" cases are overweighed by problems of social acceptance and social, economic and facility readjustment growing out of the decision of May 17, 1954. At least in some areas, there must be a twilight era when personal rights must give way to community problems and general public welfare.

Recognizing the pressing need in certain areas for permitting gradual readjustment to the principle of non-segregation, we direct the Court's attention to the need for clarification of the position of the old "separate but equal" doctrine, insofar as there may be factual educational inequality. As we have pointed out, heretofore, a finding of inequality has been held to justify immediate admission to a theretofore segregated school. If this principle is to continue and is applied at the elementary and high school level, there is no doubt of the serious repercussions which will follow. Hence, it is submitted that this Court should make amply clear that any relief in the field of public education should be given on the basis of the rights declared by this Court in its decision of May 17, 1954 and that all relief should be based upon the principles which we have discussed.

(C) *This Court Should Remand the Cases to the Lower Courts for Formulation of Decrees for the Admittance of Plaintiffs to Public Schools Without Regard to Race as Soon as Practicable Within a Time Limit to Be Set by This Court.*

Based upon the conclusion reached in the foregoing section that a period of gradual adjustment to non-segre-

gated public education is advisable in some localities, it is necessary to consider the best method of accomplishing this result.

From the factual review appearing in this brief, as well as those appearing in briefs filed on behalf of other states, it is evident that a wide diversity of public attitude exists on the subject of non-segregation. This diversity exists not only between states but even within the states, as in the case of the State of Delaware. Immediate desegregation resulting in an uneventful transition in one locality would result in strong community upheaval in another locality. Hence, there is no standard formula, no elixir by which the transition can be uniformly effected.

The transition can be moulded only through wisdom based upon a knowledge of the facts and circumstances and psychology of the community affected. These facts can best be obtained and the transition can be most smoothly effectuated by the courts in which these cases arose.

This Court has on numerous occasions remanded cases to lower courts for proceedings in accordance with the mandate of this Court. *Russell v. Southard,* 12 How. (U. S.) 139, 13 L. ed. 927; *Universal Battery Co. v. United States,* 281 U. S. 580, 50 S. Ct. 422, 74 L. ed. 1051; *Sipuel v. Board of Regents of Oklahoma University, supra; Sweatt v. Painter, supra.*

The ultimate disposition of the cases before the Court requires the determination of additional facts. Where additional facts are required, this Court has remanded cases to the lower court for ascertainment of those facts. *Panama Mail S. S. Co. v. Vargas,* 281 U. S. 670, 50 S. Ct. 448, 74 L. ed. 1105; *Universal Battery Co. v. United States, supra; Ballard v. Searls,* 130 U. S. 50, 9 S. Ct. 418, 32 L. ed. 846. This procedure has been followed in fixing the relief to be given. *Rogers v. The St. Charles,* 19 How. (U. S.) 108, 15 L. ed. 563; *United States v. American Tobacco Co., supra.*

This Court does not have before it, nor should it undertake, the Herculean task of outlawing the existing system

of public education, nor of creating a substitute. This Court has before it the rights of individual children. Those rights can best be brought to fruition at the local level by the courts of first instance. To this end, the cases should be remanded for determination of the immediacy or remoteness of the relief.

The mandate or decree of this Court should be the beacon light by which the further action of the lower courts can be guided. It should make clear that the rights enunciated in the decision of May 17, 1954 are to be effectuated by appropriate relief either immediately or as soon thereafter as community acceptance will permit. Relief should be deferred by the local courts only after thorough consideration is given to numerous factors such as the history of race relations in the community affected, the extent of social and economic segregation within the community, the permanency of the population, the extent of migration to and from the community, and the condition and capacity of existing facilities. Recognizing that the ultimate achievement is the granting of full relief to the plaintiffs, in order to entertain a deferment in the perfection of that goal, the Court must be convinced that those charged with the responsibility of effecting total integration are taking constructive steps toward the elimination of the segregation barrier and that those steps are being bona fidely carried out as expeditiously as it is possible.

In approaching this problem, the realization must be ever present that the Court is the instrumentality through which an individual is given the opportunity to exercise his constitutional right. It cannot and does not undertake to create or enforce social acceptance for an individual or race. The words of Chief Justice Vinson in the case of *McLaurin v. Oklahoma State Regents for Higher Education, supra,* are particularly pertinent. He stated (at p. 454):

> "The removal of the state restrictions will not necessarily abate individual and group predilections,

prejudices and choices. But at the very least, the state will not be depriving appellant the opportunity to secure acceptance by his fellow students on his own merits."

A further subject for inclusion in the mandate or decree of this Court is designation of a final or ultimate date within which communities may expect courts to defer the granting of immediate relief to those claiming violation of their constitutional rights because of a segregated public education system. Recognizing the local resistance to the perfection of relief under the decision of May 17, 1954 and a strong desire to defer the piercing of the segregation barrier for an extended—not an indefinite—period, it is felt that although broad discretion should be vested in the lower courts in deferring relief, this Court should set a cut-off or ultimate date for the deferring of relief in order that the decision of May 17, 1954 may not be completely thwarted.

In the prior section of this brief dealing with the advisability of providing for a period of time within which relief is to be ultimately granted, we have cited various cases in which this Court has permitted a deferral of ultimate relief. Deferral periods of six months[33] and one year[34] have received the approval of this Court in the anti-trust field. An adjustment over a four year period was permitted in the New York City garbage case,[35] and there was a span of nine years before ultimate disposition in the case in which copper companies were prohibited from discharging noxious gases over the State of Georgia.[36]

---

33. *Standard Oil Co. v. United States, supra; United States v. American Tobacco Co., supra; United States v. Paramount Pictures, Inc., supra.*

34. *United States v. National Lead Co., supra.*

35. *New Jersey v. New York,* 283 U. S. 473, 75 L. ed. 1176, 51 S. Ct. 519; 284 U. S. 585, 75 L. ed. 506, 52 S. Ct. 120; 296 U. S. 259, 80 L. ed. 214, 56 S. Ct. 188.

36. *Georgia v. Tennessee Copper Co.,* 206 U. S. 230, 51 L. ed. 1038, 27 S. Ct. 618; 237 U. S. 474, 59 L. ed. 1054, 35 S. Ct. 631; 237 U. S. 678, 59 L. ed. 1173, 35 S. Ct. 752; 240 U. S. 650, 60 L. ed. 846, 36 S. Ct. 465.

Although these precedents are not factually analogous to the present situation, they are indicative of the extent to which this Court has permitted deferment of relief in order to effect a gradual transition. We respectfully submit that this Court out of the bounty of its wisdom should fix as an ultimate date beyond which there will be no further postponement of relief under the decision of May 17, 1954 a date which will afford to the States an opportunity to plan, educate and promote community acceptance and orderly physical fruition of desegregation.

CONCLUSION.

In the light of the decision of this Court of May 17, 1954 and the successful integration of respondents into the Claymont and Hockessin Schools, the two Delaware cases should be affirmed.

The mandate of this Court should include instructions to the lower courts that, in granting or deferring immediate relief, they shall exercise equitable discretion according to local conditions provided that a constructive transitional program is shown to be in progress and subject to the limitation that ultimate relief by way of admission on a non-segregated basis shall be effected no later than a date which this Court should fix.

Respectfully submitted,

H. ALBERT YOUNG,
Attorney General of the State of Delaware,

CLARENCE W. TAYLOR,
Deputy Attorney General of the State of Delaware,

ANDREW D. CHRISTIE,
Special Deputy to the Attorney General.

EXHIBIT 1

SCHOOLS, SCHOOL DISTRICTS, AND ATTENDANCE AREAS FOR THE EDUCATION OF COLORED CHILDREN, SEPTEMBER, 1954

	(A) Colored Schools in the Special Districts and colored School Districts	(B) White Dist. in which the school bldg. of Column (A) is geographically located	(C) Spec. Dists. which have Administrative Jurisdiction over schs. listed in Column (A)	(D) Attendance Area of schs. and sch. dists. in Col. (A) totally within the boundary of a Spec. Dist.	(E) Attendance Area of schs. and sch. dists. in Col. (A) totally within boundary of a white State School District	(F) Attendance Area of Schools or School Dists. in Col. (A) within the boundaries of more than one white district	
						Special Districts	Other White School Districts
Schools	Star Hill	Caesar Rodney	Caesar Rodney	Caesar Rodney			
	Dunbar	Caesar Rodney	Caesar Rodney	Caesar Rodney			
	Claymont Col.	Claymont	Claymont	Claymont			
	Booker T. Washington	Dover	Dover			Dover, Caesar Rodney, Smyrna	Frederica, Kenton, Hartly, Magnolia, Felton, Leipsic, Little Creek, Clayton, Oak Point, Rose Valley, Wiley's
	Richard Allen	Georgetown	Georgetown	Georgetown			
	P. S. duPont	Harrington	Harrington	Harrington			
	Paul L. Dunbar	Laurel	Laurel			Laurel	Delmar, Bethel
	Lewes Col.	Lewes	Lewes			Lewes, Rehoboth	
	Benjamin Banneker	Milford	Milford	Milford			
	Newark Col.	Newark	Newark	Newark			
	Booker T. Washington	New Castle	New Castle	New Castle			
	Buttonwood	New Castle	New Castle	New Castle			
	Frederick Douglas	Seaford	Seaford			Seaford	Blades
	Thomas D. Clayton	Smyrna	Smyrna			Smyrna	Clayton
	Delaware City	Delaware City			Delaware City		
	Hockessin Col.	Hockessin					Hockessin, Yorklyn
	Iron Hill	Newark		Newark			
	Leis Chapel	Townsend			Townsend		
	L. L. Redding	Middletown				Newark, Smyrna	Delaware City, Townsend, Middletown, Odessa, Commodore MacDonough, Port Penn, Eden, Clayton
	Millside	Rose Hill-Minquadale			Rose Hill-Minquadale		
	Mt. Pleasant	Middletown			Middletown		
	Newport	Newport				Alexis I. duPont	Newport, Marshallton, Christiana, Hockessin, Stanton, Alfred I. duPont, Yorklyn, Richardson Park, Oak Grove
	Townsend	Townsend			Townsend		
	Cheswold	Dover		Dover			
	Fork Branch	Dover		Dover			
	Henry Comprehensive High School	Dover				Dover, Smyrna, Caesar Rodney, Harrington	Felton, Oak Point, Magnolia, Rose Valley, Wiley's, Frederica, Leipsic, Hartly, Little Creek, Kenton, Clayton
Districts	Kenton	Kenton			Kenton		
	Lockwood	Hartly			Hartly		
	Mt. Olive	Magnolia			Magnolia		
	Union	Frederica				Harrington	Frederica, Felton, Magnolia
	Viola	Felton				Caesar Rodney	Felton
	Woodside	Caesar Rodney		Caesar Rodney			
	Blocksom's	Seaford		Seaford			
	Bridgeville-Trinity	Bridgeville			Bridgeville		
	Delmar	Delmar			Delmar		
	Drawbridge	Lewes				Lewes, Georgetown	
	Ellendale	Ellendale			Ellendale		
	Frankford	J. M. Clayton					J. M. Clayton, Lord Baltimore, Roxana
	Jason Comprehensive High School	Georgetown				All Special Dists. in Sussex County	All State Board Unit schools in Sussex County
	Greenwood	Greenwood					Greenwood, Farmington
	Lincoln	Lincoln			Lincoln		
	Millsboro	Millsboro			Millsboro		
	Milton	Milton			Milton		
	Nanticoke Indian	Millsboro			Millsboro		
	Nassau	Lewes		Lewes			
	Owen's Corner	Delmar			Delmar		
	Portsville	Laurel				Laurel	Bethel
	Rabbit's Ferry	Lewes		Lewes			
	Rehoboth	Rehoboth		Rehoboth			
	Ross Point	Laurel		Laurel			
	Selbyville	Selbyville					Selbyville, Roxana
	Slaughter Neck	Milford				Milford	Lincoln, Milton
	Warwick 203	Millsboro			Millsboro		
	Warwick 225	Millsboro			Millsboro		
	Williamsville	Selbyville			Selbyville		

EXHIBIT 2

June 9, 1954

Mr. J. Ohrum Small
President, State Board of Education
Delaware Trust Building
Wilmington, Delaware

Re: *Gebhart v. Belton, et al. and Bulah, et al.*

Dear Mr. Small:

The United States Supreme Court, by its unanimous decision in *Brown v. Board of Education*, has struck down "the separate but equal doctrine" in the field of public education.

The Court decided that segregation of children in public schools solely on the basis of race, even though the physical facilities and other tangible factors may be equal, deprives the children of the minority group of equal educational opportunities.

The Court said, "separate educational facilities are inherently unequal" and concluded that, "the plaintiffs and others similarly situated, for whom the actions have been brought, are, by reason of the segregation complained of, deprived of the equal protections of the laws guaranteed by the Fourteenth Amendment.

According to the opinion, we are required to submit briefs by October 1, 1954 for the purpose of assisting the Court in formulating decrees to bring about an effectual gradual adjustment from existing segregated systems to a system not based on color distinctions.

The Court recognized that the decision presents problems of considerable complexity because of the great variety of local conditions. The opinion nullifies our constitutional provision and its statutory counterpart providing for separate but equal educational facilities. The Court announced that segregation is a denial of the equal protection of the laws.

The opinion is not a self-executing one and does not call for immediate integration. It is possible for any school district, however, where circumstances permit and the situation warrants, to effect integration consonant with the law of the land as now announced by the recent Supreme Court opinion without doing violence to the Constitution and laws of our own State, notwithstanding the fact that the mandate of the United States Supreme Court has not yet been handed down.

On the other hand, the State Board of Education may well require time within which to bring about integration in an orderly fashion within the spirit and meaning of the recent Supreme Court decision. I am sure that the Board will formulate some concrete plan directed towards an effective gradual adjustment from existing segregation in the public schools in Delaware to a system of non-segregation in accordance with the spirit, purpose and intent of the opinion as expeditiously as it is possible for it to do so.

I should like to meet with the members of your Board so that we may review together a number of problems, some of which we touched upon at our conference with the Governor, relating to specific localities in our State in order that I may be in a position to inform the members of the United States Supreme Court what plan for de-segregation has been adopted by our Board of Education of the State of Delaware, and when we expect it may finally be put into effect.

Based upon the plan your Board has made and the information given me to carry that plan into effect, I will be able to present to the United States Supreme Court the specific terms and directions upon which the decree or mandate should be framed.

Very truly yours,

/s/ H. Albert Young
Attorney General

HAY:mjw

EXHIBIT 3

State Board of Education Policies (I) Regarding Desegregation of the Schools of the State

The State Board of Education held a special meeting in Dover, Friday evening, June 11, and issued the following statement:

The United States Supreme Court unanimously declared that segregation in the public schools of the United States is unconstitutional. At that time the Court permitted a period within which states could present further arguments on the implementing of its action.

As a general policy, the State Board of Education fully intends to carry out the mandates of the United States Supreme Court decision as expeditiously as possible. It is recognized that communities differ one from the other in tradition and attitudes; therefore, the actual carrying out of the integrative process will require a longer period of time in some parts of the State than in others.

Accordingly, the State Board of Education adopted the following statement of policy regarding non-segregation in the public schools of Delaware:

A. Since the Wilmington School authorities have indicated that they are in a position to move promptly in the direction of integration, the necessary permission for embarking upon this program is hereby granted the Wilmington Board of Education.

B. It is the considered opinion of the State Board of Education that the school authorities together with interested citizen groups throughout the State should take immediate steps to hold discussions for the purpose of (1) formulating plans for desegregation in their respective districts and (2) presenting said plans to the State Board of Education for review.

C. The State Board of Education will examine proposed programs of integration in light of the following considerations:

1. School Districts

a. There are many items of legislation which must be prepared in order to effect these changes and immediate plans are being made to prepare such legislation for presentation to the General Assembly of 1955, for example, the elimination of Negro districts as they now exist and their assimilation into taxing units already existing or later to be created.

b. The State Board of Education intends to make every effort possible within the limits of existing legislation not only to avoid the creation of educationally unsound units, but also to promote as far as possible the formation of larger and more efficient administrative units.

2. Attendance Areas

a. Economy requires the continued use of many of the school buildings now existing in the State.
b. In all districts attendance areas are to be fixed by the local school authorities under regulations to be established by the State Board of Education.

3. School Construction

a. The State Board of Education must reappraise the need for the construction of certain schools or additions for some districts authorized under the 1953 School Construction Act, but these and similar ones will be approved by the State Board of Education if and when the local school authorities submit plans showing the place of such construction in an over-all educational program for the community.

b. The necessity of proceeding with some of these plans as rapidly as possible is recognized because of the local school census data, but the State Board of Education will insist upon having, in at least outline form, a plan for the use of such additional facilities before approving further construction.

The resources of the State Department of Public Instruction will be available to all districts in the solution of these problems.

The State Board of Education has confidence that the people of the State of Delaware will meet the challenge of the times courageously, intelligently, and understandingly.

Adopted
June 11, 1954

STATE BOARD OF EDUCATION

GEORGE R. MILLER, JR.
George R. Miller, Jr.
Secretary

EXHIBIT 4

PROVIDING EQUAL EDUCATIONAL OPPORTUNITY IN THE WILMINGTON PUBLIC SCHOOLS

Resolution adopted by the Board of Public Education in Wilmington, on August 2, 1954

BOARD OF EDUCATION IN WILMINGTON

GAIL BELDEN, *President*

ELEANOR L. J. CUSSLER, *Vice President*

WILLIAM H. CANTWELL
AARON FINGER
THOMAS J. HEALY, JR.
HILMAR L. JENSEN

ADMINISTRATIVE COUNCIL

WARD I. MILLER, *Superintendent*

A. B. ANDERSON, *Director Vocational Education*
MURIEL CROSBY, *Director Elementary Education*
JOHN J. MURRAY, *Director, Business Administration*
M. CHANNING WAGNER, *Director, Secondary Education*

RESOLUTION REGARDING INTEGRATION OF THE WILMINGTON PUBLIC SCHOOLS

On May 17, 1954, the Supreme Court of the United States handed down its unanimous decision that segregation of pupils in the public schools is a violation of the federal constitution and represents a denial of the equal protection of the laws.

However, the court saw fit to postpone the issuance of decrees implementing its opinion and ordered the cases restored to the docket for reargument beginning October 1, 1954. Following these considerations, it is expected that the formal decrees will be issued by the court.

Under date of June 9, 1954, the Honorable H. Albert Young, Attorney General of the State of Delaware wrote to Mr. J. Ohrum Small, President of the State Board of Education as follows:

> "According to the opinion, we are required to submit briefs by October 1, 1954 for the purpose of assisting the court in formulating decrees to bring about an effectual gradual adjustment from existing segregated systems to a system not based on color distinction.
>
> "The Court recognized that the decision presents problems of considerable complexity because of the great variety of local conditions. The opinion nullifies our constitutional provision and its statutory counterpart providing for separate but equal educational facilities. The Court announced that segregation is a denial of the equal protection of the laws.
>
> "The opinion is not a self-executing one and does not call for immediate integration. It is possible for

any school district, however, where circumstances permit and the situation warrants, to effect integration consonant with the law of the land as now announced by the recent court opinion without doing violence to the Constitution and laws of our own State, not withstanding the fact that the mandate of the United States Supreme Court has not yet been handed down."

On June 11, 1954, the State Board of Education issued a formal statement based on the opinion of the attorney-general as given above, authorizing the Board of Public Education in Wilmington to proceed with the development of plans for the integration of the city schools and asking that such measures as are approved be forwarded to the State Board for inclusion in the brief to be submitted to the Court before October 1.

At a meeting of the Board of Public Education in Wilmington held on June 21, 1954, the Superintendent presented specific proposals regarding integration of the city schools. These were considered with great care and thoroughness. The proposals were studied again at the regular meeting held on July 8, 1954. At this time opportunity was given individuals or representatives of organizations or groups to put forward any statement or materials. A number of persons availed themselves of this opportunity. The proposals of the Superintendent and staff and the remarks of individuals were well covered in the press and on the radio and television.

Since that time numerous letters and calls have been received by the Board and the Superintendent both in support of and in opposition to the plans under consideration.

Following a complete review of all the questions that have been raised, on August 2, 1954, the Board approved by resolution the following plan and authorized the Superintendent to take the steps necessary to put it into effect.

POLICIES REGARDING INTEGRATION

1. The Board desires to take at once such steps as are practical and possible toward the implementation of the decision of the Supreme Court. The integration of the summer school program, of the course in practical nursing and of certain classes in special education, constitute initial steps toward that objective.

2. The following policies are approved and the Superintendent is authorized to put them into effect immediately.

A. Policy regarding elementary schools

Attendance areas will be established around each elementary building unit. While pupils living in a particular area would normally attend the school located in that area, nevertheless, in accordance with the policy now in effect, parents may request transfer of their children to another unit. Reassignment will be made if space elsewhere is available.

B. Policies regarding attendance of pupils in trade and industrial courses at the Brown Vocational High School and the Howard High School.

a. All courses offered in only one of these high schools shall be open to all students regardless of residence.

Courses offered only at Brown—1954-55

Commercial Art	Industrial Chemistry
Needle Trades	Plumbing
Printing	Radio and Television

Courses offered only at Howard, 1954-55

Shoe Repair	Auto Body and Fender

b. If found qualified, pupils now enrolled in the **Electricity** course at Howard may transfer to Brown after completion of the units on "Wiring."

c. Requests for enrollment in the above courses by students already registered in other courses will be approved only after a conference with the counselors and the principals of the schools concerned.

d. Opportunity for new registration in the courses listed above and guidance conferences will be provided up to August 20, 1954.

C. Policies regarding reassignment of teaching staff

Transfer and reassignment of the teaching staff shall be made as necessary to implement the above policies.

D. Policies regarding evening schools and all activities of extended services

All approved classes shall be open to students on an equal basis.

E. Policies regarding junior and senior high schools

The integration of junior and senior high schools presents difficult problems which will require further study. Therefore, for the school year 1954-55, no change will be made in the operation and attendance of the junior and senior high schools, with the following exception:

Students in the eleventh or twelfth grades desiring advanced work in classes not offered in one school may transfer to another in which such courses are given.

PROCEDURES TO BE FOLLOWED IN REQUESTING TRANSFER OF PUPILS

All requests for transfer of pupils from one school unit to another must be made by parents or guardians in writing to the Superintendent of Schools. The name and grade of each child, home address and telephone number will be required. All requests should be filed not later than August 15, 1954. As soon as possible thereafter and not later than August 25, 1954, parents will be notified in writing of the action taken on the request. Parents should call the office of the principal of the school to learn the elementary district in which they reside.

ATTENDANCE AREAS OF ELEMENTARY SCHOOLS
1954 - 1955

Harlan

North —City line

West —City line

South —West of Market Street—West 27th Street

East of Market Street—East 30th Street to junction of Claymont Street and Todd's Lane, thence Todd's Lane

East —City line

Shortlidge

North —West 27th Street

West —City line

South —West 21st Street

East —Market Street

Washington

North —West 21st Street

West —Between Brandywine Creek and West 21st Street—City line

Between Brandywine Creek and Delaware Avenue—Van Buren Street

Between Delaware Avenue and Eighth Street —Monroe Street

South —Between Van Buren Street and Monroe Street —Delaware Avenue

Between Monroe and Market Street—West Ninth Street

East —Market Street

Gray

North —East 30th Street to junction of Claymont and Todd's Lane, thence Todd's Lane

West —Market Street

South —Market Street to junction of Jessup Street and East 14th Street—Brandywine Creek, thence East 14th Street

East —City line

Stubbs and No. 20

North —Market Street to junction of Jessup Street and East 14th Street—Brandywine Creek, thence East 14th Street

West —Market Street

South —East Eighth Street

East —City line

Drew and Pyle

North —East Eighth Street

West —Market Street

South —Christina River

East —City line

Palmer and Elbert

North —Christina River

West —Christina River

South —City line

East —City line

Lore

North —Pennsylvania Avenue

West —City line

South —Between western City line to Lincoln Street—City line

Between Lincoln Street and Broom Street—Beech Street

East Broom Street

Williams

North —Between Broom Street and Van Buren Street —Pennsylvania Avenue

Between Van Buren Street and Monroe Street —Delaware Avenue

Between Monroe Street and Market Street—West Ninth Street

West —Broom Street

South —Beech Street

East —Market Street

Highlands

North —Brandywine Creek

West —City line

South —Pennsylvania Avenue

East —Van Buren Street

Number 19

North —Beech Street

West —City line

South —City line

East —Christina River

EXHIBIT 5

STATE OF DELAWARE

(Seal)

STATE BOARD OF EDUCATION
Dover, Delaware

SUGGESTED POLICIES FOR OPENING OF SCHOOL (II)

In the policy statement regarding the problem of desegregation issued by the State Board of Education it was clearly stated that all school districts should immediately take steps to develop plans for desegregation.

No pupils, except those *with proper transfer* permits shall be accepted by any school from other schools unless and until plans from that school for desegregation in that area have been approved by the State Board of Education.

In September 1954 all buses will run as usual and all teachers will appear at their regular posts except in those cases where approved plans for desegregation have been made effective with the required administrative or organizational changes.

Since the United States Supreme Court will hear further arguments some time in October to help that court find the best means of carrying out its decree, the State Board requests that *all schools,* maintaining four or more teachers, present a *tentative plan* for desegregation in their area on or before *October 1, 1954.*

These plans will be considered tentative only, unless otherwise indicated by the school authorities.

Adopted by
State Board of Education
August 19, 1954

EXHIBIT 6

STATE OF DELAWARE

(Seal)

STATE BOARD OF EDUCATION

Dover, Delaware

SOME ITEMS AND SUGGESTIONS RELATIVE TO DESEGREGATION PLANS (III)

INTRODUCTION:

In order to facilitate the adoption by the State Board of Education of policies relating to the ending of segregation in Delaware, the State Board on June 9, 1954, requested the local boards of education or school trustees to formulate and present proposals relating to the ending of segregation in their respective districts. Local boards are now asked to present their proposals or report the status of their studies not later than October 1, 1954.

The following data or suggestions are designed as a guide to local boards in arriving at a proposal for ending segregation in the respective school districts:

ITEMS TO BE CONSIDERED IN PLANNING:

In the preparation of a plan the following are essential data:

(a) Total number of children to be served in the district or districts involved.

(b) Total number of children who can be housed in the building or buildings available.

(c) Determination of the number of teaching positions to be used.

(d) Possible number of pupil applicants to be expected.

(e) Attendance rules and requirements.

SUGGESTIONS WHICH MAY BE CONSIDERED IN PLANNING:

It is suggested that in formulating plans to end segregation local boards may desire to consult with a committee composed of lay and professional groups in their districts in order that such groups may contribute to the planning and may, in turn, become acquainted with the problems, if any, involved. The function of this committee would be solely advisory to the local board of education.

It is the sincere hope of the State Board of Education that all teachers presently employed and who have had successful experience will be retained in whatever pattern of integration that is ultimately developed.

For the sake of educational continuity and for the sake of maintaining an adjustment status of individuals, it is strongly suggested that, where possible, pupils be allowed to complete the grade group in which they are presently enrolled, e.g., a student attending the elementary school, grades 1-6, should be allowed to complete the six grades in that particular school situation. The same suggestion applies to the junior high school and the senior high school divisions.

School districts may contain one or more attendance areas. If more than one attendance area is contained in a school district, the following must be taken into consideration:

(a) GERRYMANDERING—It is obvious that schools in physical areas inhabitated largely or altogether by Negroes will be attended mostly or entirely by Negro children. The same will be true of certain schools in white sections. This results from geographic location and has nothing to do with discrimination.

"If attendance districts, however, are so contoured as to skip houses or blocks or to extend geographical peninsulas and islands into physically unified areas solely for the purpose of including families of a particular race,

it is reasonably certain that the districting would be regarded as an invalid evasion of desegregation requirements." (Harvard Law Review, v. 67, Number 3, Jan. 1954.)

(b) MAINTAINING SEGREGATION IN NON-SEGREGATED SCHOOLS—Colored pupils may not be separated for intra-mural activities in study halls, or classrooms, nor shall there be any racial seating arrangement in the classrooms or elsewhere in the school. (McLaurin v. Oklahoma State Regents, 339 U. S. 637 (1950)

(c) ADMINISTRATIVE PRACTICES—No board of education nor board of school trustees shall set up special examinations or any entrance procedures the purpose of which is aimed at excluding Negro pupils from the white schools.

If a school district has more than one building serving a given grade, attendance at a particular school could be decided by choice of the student provided, in the event of insufficient space at a particular school, preference should be given students residing nearest the school in question.

The State Board of Education believes that constitutional requirements are met either by integration within the fixed attendance areas or integration based on a single attendance area wherein freedom of choice is exercised to the extent that physical facilities will allow. The decision as to which type of attendance plan is established in a school district ultimately rests with the local board of education.

When the proposal made by a local board has been approved by the State Board, it will be the responsibility of the local board to present and explain the approved plan to the people of the district concerned.

Adopted by the
State Board of Education
August 26, 1954

EXHIBIT 7

REPORT OF APPROVED PLANS FOR DESEGREGATION AND PUPILS INVOLVED

District	Grades desegregated	White	Colored
Wilmington	Kindergarten through Grade 6	5,491	2,123
	Howard High School (formerly colored)	10	554
Claymont	All grades	1,184	48
New Castle	Grades 9 through 12	575	21
	Grade 1	268	15
Newark	Grades 7 through 12	1,040	50
Alfred I. duPont	Grades 1, 2, 3, 5, 7, 9 (Only one family involved)	941	7
Delaware City	Grades 7 through 12	54	20
Dover	Desegregated for academic program in high school	716	19 eligible
Conrad	Grades 10 through 12	680	19
Alexis I. duPont	High School and grade school	972	12
Hockessin	Grades 1 and 5	106	7
	TOTAL	12,007	2,895

The total number of white pupils as of September 30, 1954 was 47,696 and the total colored 10,225, or a grand total of 57,921 white and colored pupils.